

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WID-DONALD PAUL,	§
	§ Nos. 301 and 318, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0311018202
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 11, 2011

Decided: August 15, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 15th day of August 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Wid-Donald Paul, has filed an appeal from the Superior Court’s May 17, 2011 order dismissing his “Motion to Resubmit Post Conviction Relief Pursuant to Criminal Rule 61(G) (2).” The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the

ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in April 2004, Paul pleaded guilty to Conspiracy in the Third Degree as a lesser-included charge of Conspiracy in the Second Degree. The State dismissed several other drug-related charges. Paul was sentenced to 1 year of Level V incarceration, to be suspended for 1 year at Level II probation.

(3) In April 2005, Paul's probation officer filed a report alleging that he had committed a violation of probation ("VOP") by a) incurring new criminal charges and b) failing to pay his court costs in full. In December 2005, Paul was found by the Superior Court to have committed a VOP and was sentenced to 1 year at Level V, to be suspended for 6 months at Level III probation. The record before us reflects that Paul's sentence on his conviction of Conspiracy in the Third Degree was completed in 2006.

(4) Although the docket does not so reflect, Paul alleges that he filed a motion for postconviction relief in the Superior Court in March 2011. In May 2011, he filed a motion to "amend" that motion. Paul claimed that his counsel provided ineffective assistance by a) failing to advise him that he could be deported as a result of his conspiracy conviction; and b) advising him to plead

¹ Supr. Ct. R. 25(a).

guilty when there was no proof of his guilt. The Superior Court denied the motion as untimely and moot.

(5) Delaware law provides that the Superior Court must first consider whether the defendant has satisfied the procedural requirements of Rule 61 before considering the merits of his postconviction motion.² In this case, the Superior Court correctly ruled that Paul's postconviction was time-barred under Rule 61(i)(1). Paul attempts to overcome the time bar by arguing that his attorney provided ineffective assistance during the guilty plea proceedings, first, by failing to advise him that a guilty plea could result in deportation.³

(6) Under Delaware law, once a criminal sentence is completed, any postconviction claim with respect to that conviction is moot because the defendant is no longer "in custody or subject to future custody" as a result of that conviction.⁴ The only exception to the rule is when the defendant "suffers collateral legal disabilities or burdens."⁵ The defendant has the burden of "demonstrating specifically a right lost or disability or burden imposed, by reason of the instant conviction."⁶

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

³ *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) ("... advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel.")

⁴ Super. Ct. Crim. R. 61(a)(1).

⁵ *Gural v. State*, 251 A.2d 344, 344-45 (Del. 1969).

⁶ *Id.*

(7) The record in this case reflects that Paul is no longer in custody or subject to future custody with respect to his conviction of Conspiracy in the Third Degree. In order to overcome the general rule mootng his claims, he must demonstrate a specific right lost or burden imposed as a result of that conviction. In that respect, Paul's appeal fails. Nowhere does he specifically identify a right lost or a burden imposed as a result of his conviction. Moreover, Paul provides no legal or factual basis for his second claim that his attorney provided ineffective assistance by advising him to plead guilty. As such, the Superior Court correctly dismissed his postconviction motion.

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice